APPELLATE CIVIL.

Before Mr. Justice Baguley, and Mr. Justice Mosely.

MAUNG BA TUN *v.* U OHN KHIN.*

1938
Jan. 13.

Workmen's Compensation Act, s. 3 (1), proviso (b)—Injury arising from wilful disobedience of order or of rule of safety—Misconduct—Law applicable in Burma—Compensation for loss of arm—Meddling with machinery for repair—Rule forbidding touching of machinery.

Under the Workmen's Compensation Act an employer is not liable for personal injury to his workman by an accident which is directly attributable to the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen. Unlike English law the question does not arise in Burma whether that disobedience amounted to serious and wilful misconduct or not.

Held, that a workman cannot claim compensation for the loss of his arm when he deliberately meddles with machinery with the idea of effecting a repair which was no part of his job, and which machinery he was forbidden to touch.

K. C. Sanyal for the applicant.

A. N. Basu for the respondent.

MOSELY, J.—The appellant, Maung Ba Tun, claimed Rs. 500 from the respondent, U Ohn Khin, his employer, under the Workmen's Compensation Act. Maung Ba Tun was employed in an oil-mill owned by U Ohn Khin. He was in charge of one of the oil-presses, all of which were worked by an oil engine. The presses were rotated by a wooden beam fixed to a horizontal wheel enmeshed with a vertical wheel placed upon it and connected by a belt with the engine. The beams on which the wheels are fixed are from about eleven to twelve feet from the ground. The applicant climbed up as he thought that there was a screw loose in a wheel, put his arm between two wheels and, perhaps after slipping, his hand was crushed, and he had to have his arm amputated. The defence was

* Civil Misc. Appeal No. 61 of 1937 from the order of the Commissioner in Workmen's Compensation Case No. 2 of 1937.

1938

MAUNG BA TUN v. U OHN KHIN.

MOSELY, J.

that when the power was changed from electricity to oil shortly before the accident, a notice (a copy of which is Exhibit A) was put up, warning all the employees that "they were strictly prohibited from going up the machine when it was working and from doing any work other than theirs."

The relevant provisions of the Act as amended by Act XV of 1923 [section 3 (*1*) and proviso (*b*) to it] are that the employer shall be liable for personal injury caused to a workman

> "by accident arising out of and in the course of his employment . . . provided that the employer shall not be liable in respect of any injury not resulting in death caused by an accident which is directly attributable to . . . (ii) the wilful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen . . ."

I can see no reason whatever on the merits to interfere with the order of the learned Commissioner. The applicant adduced practically no evidence in support of his own statement that it was part of his duty to effect slight repairs to the machinery to prevent stoppage of work. His first witness, Maung Thein, did not work in that mill; he claimed to be an occasional visitor there, but said that it was the driver's duty to repair any such defect as a loose screw, and not the duty of a workman of the oil-press. The second witness, Maung Tun Ngwe, claimed to have worked for two days in this mill,—though that was denied by the respondent,—probably when, as the Commissioner thought, it was worked by electric power. He said that he was told by the other workmen that they had to go and effect petty repairs, but that he had no knowledge himself. His last witness, Maung Ba Mu, worked in another mill, but claimed to have constantly visited

this mill. He says that the man in charge of the press had to look after the machinery above his press if anything went wrong, and that he had seen witness Maung Din doing some repairs. That was the only man he mentioned. He really could have had no knowledge that it was part of the press-man's duty.

The learned Commissioner held that there was reliable evidence for the respondent to show that the employees were forbidden to meddle with the machinery, and, as I have said, I see no reason to interfere with his finding.

One thing, however, must be commented on, and that is the cases which have been cited to us in support of the appellant's contention that the accident arose while performing part of his duty, or that even if he was not repairing the machinery in the course of his employment he was entitled to compensation. It is often dangerous to cite English cases quoted in Indian commentaries without ascertaining whether the English law applicable is the same as the Indian law. In the present instance the English law is radically different from the Indian law, and the cases quoted are therefore entirely inapposite. Under the English Act of 1897 [section 1, sub-section (*2*) (*c*)] the employer is liable to pay compensation, provided that if it is proved that the injury to a workman is attributable to serious and wilful misconduct of that workman, any compensation claimed in respect of that injury has to be disallowed, and the English Acts of 1906 [section 1, sub-section (*2*) (*c*)] and 1925 section 1 (*1*) proviso (*b*) also disallow any compensation for injury attributable to serious and wilful misconduct of a workman, but except cases where the injury results in death or serious disablement. The case of *White-head* v. *Reader* (1), which was

(1) (1901) 2 K. B. 48.

1938

MAUNG BA TUN v. U OHN KHIN.

MOSELY, J.

decided under the Act of 1897, was a case where a carpenter had as part of his duty to sharpen his tools on a grindstone rotated by machinery. He had received orders not to touch the machinery, but tried to replace the band that rotated the machinery despite those orders, and in doing so was injured. It was found that his forgetting the order as to not touching the machinery was not unnatural, and might well be regarded as a venial act, and not as serious and wilful misconduct, and that, therefore, he was entitled to compensation. *Mawdsley* v. *West Leigh Colliery Co., Ltd.* (1) was a case decided under the Act of 1906, where the workman died, and therefore the question of wilful misconduct did not arise. Other similar cases cited need not be discussed.

Under the Act in force in Burma, the sole question is whether the workman wilfully disobeyed a rule devised for the purpose of securing the safety of workmen, and not whether that disobedience amounted to misconduct, serious or otherwise.

For the reasons given this appeal must be dismissed with costs.

BAGULEY, J.—I agree. Had the appellant in a moment of forgetfulness put out his hand and touched some machinery he had been forbidden to touch then it might have been regarded as something less than wilful disobedience, it might perhaps have been something more in the nature of momentary forgetfulness. In the present case the man had to climb up a matter of 11 or 12 feet. Such a climb cannot be done instantaneously, and doing that must be regarded as showing that his meddling with the machinery he had been forbidden to touch was wilful disobedience.

(1) Butterworth, Vol. 5, p. 80.